

B. AMERITECH ILLINOIS IS NOT REQUIRED TO PROVIDE ACCESS TO THE HFPL OVER THE UNE-P, WHERE AMERITECH ILLINOIS IS NOT THE VOICE PROVIDER.

AT&T's proposal that Ameritech Illinois' "line sharing" obligations apply when AT&T purchases the UNE-P is contrary to the *Line Sharing Order* and *Texas 271 Order*,³¹ which specifically hold that ILECs cannot be required to provide line sharing to CLECs using the UNE-P. In its *Line Sharing Order*, the FCC required incumbent LECs to provide CLECs with access to the high-frequency portion of the local loop when the incumbent LEC provided the underlying voice service. AT&T's proposal is inconsistent with the FCC's requirements. Indeed, AT&T's proposal does not involve line sharing at all as defined by the FCC. Rather, AT&T is attempting to impose requirements on Ameritech Illinois that are completely outside of any FCC "Line Sharing" requirements. Specifically, AT&T is attempting to require Ameritech Illinois to provide splitters and provision the HFPL UNE as part of the UNE-P, even though Ameritech Illinois would not be the voice service provider.

The FCC defined "line sharing" as "the provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop" (emphasis added). The FCC required in paragraph 70 of the *Line Sharing Order* that ILECs provide access to the HFPL only "on loops that carry the incumbent's traditional POTS." In paragraph 72 of the *Line Sharing Order* (which is, significantly enough, titled "Incumbent Remains Voice Carrier"), the FCC found that "the record does not support extending line sharing requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop for a competitive LEC to obtain access to the high frequency portion," and,

³¹ Memorandum Opinion and Order in CC Docket 00-65, Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Service, Inc. d/b/a Southwestern

therefore, "incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element *on loops on which the incumbent LEC is also providing analog voice service*" (emphasis added). The FCC further stated that "incumbent carriers *are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform*" because "in that circumstance, the incumbent no longer is the voice provider to the customer." *Line Sharing Order* at 72 (emphasis added). AT&T's proposal that Ameritech Illinois be required to provide access to the HFPL through Ameritech Illinois-owned splitters when AT&T is purchasing the UNE-P is contrary to these unequivocal pronouncements by the FCC.

The FCC confirmed this conclusion in the *Texas 271 Order*. In that proceeding, AT&T advocated exactly the same position regarding line splitting that AT&T has taken in this tariff investigation. The FCC considered AT&T's arguments and rejected them. In its June 30, 2000 *Order*, the FCC reconfirmed that ILECs are not required to provide "line sharing" to CLECs obtaining the UNE-P. Specifically, paragraphs 323 through 330 state:

323. Line Splitting. Some commenters contend that SWBT has unlawfully hindered the ability of competing carriers to use the UNE-P to provide both xDSL and voice services. For instance, AT&T argues that SWBT has unlawfully denied AT&T access to SWBT's splitter and has thereby made it more difficult for AT&T to use the UNE-P to provide advanced services. The Department of Justice also noted this issue in passing, but it did not suggest that the issue casts doubt on the merits of this application.

324. As a preliminary matter, we note that under the *Line Sharing Order*, the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access. Thus, the situation that these commenters describe is not technically line sharing, because both the voice and data service

Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, FCC 00-238, (June 30, 2000) ("*Texas 271 Order*").

will be provided by competing carrier(s) over a single loop, rather than SWBT. To avoid confusion, we characterize this type of request as "line splitting," rather than line sharing.

325. The Commission's rules require incumbent LECs to provide requesting carriers with access to unbundled loops in a manner that allows the requesting carrier "to provide any telecommunications service that can be offered by means of that network element." As a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter. The record reflects that SWBT allows competing carriers to provide both voice and data services over the UNE-P. For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service. SWBT provides the loop that was part of the existing UNE-P as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-P is not capable of providing xDSL service.

326. AT&T also argues that it has a right to the line splitting capability over the UNE-P with SWBT furnishing the line splitter. AT&T alleges that this is "the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive." Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of the loop, including electronics attached to the loop. AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.

327. We reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available. As we stated in the *UNE Remand Order*, "with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity." We separately determined that the DSLAM is a component of the packet switching unbundled network element. We observed that "DSLAM equipment sometimes includes a splitter" and that, "[i]f not, a separate splitter device separates voice and data traffic." We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element. That distinction is critical, because we declined to exercise our rulemaking authority under section

251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding.³²

328. The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters. Indeed, the only discussion of the splitter appeared in a discussion of a network element (the packet switching element) that we decided not to unbundle, and that discussion at least suggested that the splitter, because it is often part of the DSLAM, might properly be considered part of that element as a general matter. In response to petitions for reconsideration of the *UNE Remand Order*, we have been asked to consider whether to impose on incumbent LECs a new obligation to provide access to the splitter, just as we are often asked to adjust our unbundling rules in light of industry developments. In this regard, we believe AT&T's arguments merit prompt and thorough consideration by the Commission, and we commit to resolving them expeditiously in our reconsideration of the *UNE Remand Order*. The fact remains, however, that SWBT had no such obligation during the period covered by this application and therefore, any SWBT failure to provide access to the splitter can provide no basis for denying this application.

329. Finally, AT&T suggests in passing that SWBT "'voluntarily" provides the line splitter functionality to competing carriers engaging in line sharing with SWBT voice services and that it has for that reason incurred an obligation to provide all UNE-P carriers with the same option. Even if AT&T had fully developed this issue, this argument would lack merit and would in any event be unripe for our review here. What AT&T requests is not line sharing, but access to the entire loop and the splitter in order to provide both voice and advanced services. Line sharing and line splitting present two different scenarios under our rules. With respect to line sharing, we stated in the *Line Sharing Order* that incumbent LECs have discretion to maintain control over the splitter. With respect to line splitting, as described above, we have not imposed any obligation on incumbent LECs to provide access to their splitters. AT&T presents no evidentiary or conceptual basis for concluding that SWBT's practices in these two different contexts somehow amount to "discrimination" against AT&T. In any event, the parties' entire dispute on the question of line splitting is a recent development and is subject to further negotiation and, if necessary, arbitration before the Texas Commission. In light of SWBT's overall compliance with the relevant checklist items, this newly arising dispute provides no basis for rejecting SWBT's application here.

330. We reject AT&T's argument that we should deny [SWBT's Section 271] application on the basis of SWBT's decision to deny its xDSL service to

³² Paragraph 327 clearly indicates that the splitter is not part of the loop, which the FCC has chosen to unbundle, but rather is part of the packet switching element, which the FCC has chosen not to unbundle. Based on this paragraph alone, the Commission should reject AT&T's assertion that the splitter is part of the associated loop electronics that allow access to the HFPL and, therefore, must be provided by ILECs.

customers who choose to obtain their voice service from a competitor that is using the UNE-P. Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop. In the *Line Sharing Order*, the Commission unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes {i.e., where the ILEC is not the voice provider}. (Emphasis added.)

Clearly, the *Texas 271 Order* confirms that ILECs may not be required to provide "line sharing" to carriers obtaining the UNE-P and, in fact, "the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide voice service on the particular loop to which the requesting carrier seeks access."

AT&T has suggested that state Commissions are free to establish additional requirements beyond those established by the FCC and, therefore, this Commission should impose a line splitting obligation on Ameritech Illinois despite the FCC's decision to the contrary. Ameritech Illinois does not dispute that state commissions have some authority to impose requirements beyond those imposed by the FCC, consistent with the legal strictures discussed in Section I above. Line splitting, however, is not an issue where the FCC has remained silent. Rather, the FCC has explicitly held that ILECs are not required to provide line splitting as proposed by AT&T. Accordingly, this Commission lacks authority to reach a different result. *See AT&T Corp.*, 119 S.Ct. at 730 n. 6 (under the 1996 Act, state commissions must regulate "in accordance with federal policy" and the FCC has authority to "draw the lines to which [state commissions] must hew"). Insofar as existing federal law is concerned, the FCC drew the line against AT&T's line splitting proposal in the *Line Sharing Order* and *Texas 271 Order*, and this Commission is not free to ignore it.

Moreover, AT&T's assertion that its proposed "line-splitting" requirement is the only practical mechanism for rapid and broad market entry for a CLEC seeking to serve the mass market in competition with Ameritech Illinois is unsupported by any credible record evidence and is wrong. There is no evidentiary support for AT&T's claim that, unless Ameritech Illinois is required to implement the line splitting procedures that AT&T desires to facilitate AT&T's ability to add, modify, or remove xDSL capabilities in the HFPL of a new or already operating UNE loop, AT&T's ability to compete will be significantly constrained. Ameritech Illinois is in no better position than AT&T to purchase and install splitters. AT&T can serve customers and compete in a variety of ways, including through FCC-mandated line sharing, or through purchasing unbundled loops (either separately or with other UNEs) and installing its own splitters, or partnering with a data CLEC that has its own splitters and DSLAMs. In short, it is just as easy for AT&T to purchase and install, or team with a data CLEC that purchases and installs, its own splitters and combine those splitters with the UNEs that make up the UNE-P, as it is for Ameritech Illinois to perform those tasks. If the FCC thought that AT&T's proposed "line splitting" requirement was necessary to the development of competition, it would have ordered ILECs to provide such "line splitting" in addition to line sharing. The FCC, however, specifically ruled that ILECs are not required to provide such line splitting.

More importantly, the record disproves AT&T's assertions concerning its ability to compete. Indeed, the record establishes that AT&T is the largest cable services provider in the United States, as it serves about 16 million homes nationwide and passes by about 27 million homes nationwide, and aggressively markets broadband services to those customers. *See* Schedule CAC-2; Tr. at 648-49. AT&T also has recently launched a market program designed to attract up to 650,000 telecommunications service customers by offering them up to five

months free long-distance and local service through AT&T's cable system. *See* CAC-3; Tr. at 651-52. AT&T already has about 224,000 such telecommunications service customers. *Id.* AT&T is using cable broadband connections to provide digital video, Managed Internet access, telephony, interactive TV and small business services to customers served by fiber reach. *See* CAC-2; Tr. at 649-50. Clearly, cable-telephony (in addition to FCC-mandated line sharing and purchasing unbundled loops (either separately or with other UNEs) and installing splitters or teaming with a data CLEC that already deploys its own splitters) is a practical mechanism for broad-based market entry to provide telephone service.

C. AMERITECH ILLINOIS CANNOT BE REQUIRED TO PROVIDE SPLITTERS.

On a more fundamental level, AT&T's proposal that Ameritech Illinois be required to provide the line splitter when AT&T seeks access to the HFPL using the UNE-P is contrary to federal law. Ameritech Illinois has no obligation whatsoever to provide splitters. Ameritech Illinois has not only fulfilled its obligations under the *Line Sharing Order*, but has exceeded them by voluntarily agreeing to provide splitters in conjunction with line sharing.

1. The FCC Has Specifically Ruled That ILECs Are Not Required To Provide Splitters.

AT&T's proposal that Ameritech Illinois be required to provide splitters is directly contrary to the FCC's *Line Sharing Order* and the *Texas 271 Order*, which provide that an ILEC, in its sole discretion, may *choose* to provide its own splitters. The *Line Sharing Order* does not obligate Ameritech Illinois to own the splitter; rather, the FCC gave ILECs the option to maintain control over the splitter, but does not require them to do so (§ 76):

We conclude that, subject to certain obligations, incumbent LECs *may* maintain control over the loop and splitter equipment and functions. In fact, both the incumbents and the competitive LECs agree that subject to certain obligations, the incumbent LEC *may* maintain control over the loop and splitter functionality if desired. (Emphasis added.)

Additionally, the FCC ruled in Paragraph 146 of the *Line Sharing Order*:

We conclude that incumbent LECs must *either* provide splitters *or* allow competitive LECs to purchase comparable splitters as part of this new unbundled network element. (Emphasis added.)

Thus, an incumbent LEC has the option either to provide splitters or to allow competitive LECs to purchase splitters themselves. Ameritech Illinois is under no obligation to make available Ameritech Illinois-owned splitters under the *Line Sharing Order*.

The FCC reconfirmed this in paragraph 328 of the *Texas 271 Order*, stating “[t]he *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters.” This Commission reached the same conclusion in Ameritech Illinois’ arbitrations with Rhythms and Covad.³³

The FCC also specifically rejected AT&T’s argument that ILECs must provide splitters when CLECs engage in line splitting over the UNE-P:

We reject AT&T’s argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available.

Texas 271 Order ¶ 327.

Clearly, under the *Line Sharing Order* and *Texas 271 Order*, Ameritech Illinois has no obligation to provide AT&T with access to Ameritech Illinois’ splitters.

The Commission also should reject AT&T’s assertion that it is discriminatory for Ameritech Illinois to voluntarily provide splitters to data CLECs who line share and not provide

³³ Petitions for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a/ Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues, ICC Dockets No. 00-0312 and 00-0313, at 12 (Aug. 17, 2000) (“*Covad/Rhythms Arbitration Decision*”).

splitters to UNE-P CLECs. That assertion is baseless and has already been rejected by the FCC in the *Texas 271 Order*. As the FCC concluded:

Finally, AT&T suggests in passing that SWBT 'voluntarily' provides the line splitter functionality to competing carriers engaging in line sharing with SWBT voice services and that it has for that reason incurred an obligation to provide all UNE-P carriers with the same option. Even if AT&T had fully developed this issue, this argument would lack merit and would in any event be unripe for our review here. What AT&T requests is not line sharing, but access to the entire loop and the splitter in order to provide both voice and advanced services. Line sharing and line splitting present two different scenarios under our rules. With respect to line sharing, we state in the *Line Sharing Order* that incumbent LECs have discretion to maintain control of the splitter. With respect to line splitting, as described above, we have not imposed any obligation on incumbent LECs to provide access to their splitters.

(*Texas 271 Order* ¶ 329.) Based on the same reasoning, this Commission should reject AT&T's discrimination claim. Moreover, as AT&T admits, Ameritech Illinois offers all CLECs, including its own data affiliate, access to the HFPL UNE on exactly the same terms and conditions. Tr. at 621. This, by definition, is nondiscriminatory.

In short, although Ameritech Illinois has agreed to voluntarily provide splitters on a line-at-a-time basis to CLECs in conjunction with FCC-required line sharing - *i.e.*, when Ameritech Illinois continues to be the voice service provider - it is not legally required to do so. It necessarily follows that there is no viable legal basis for requiring Ameritech Illinois to provide the splitter when Ameritech Illinois is not providing the voice service, as would be the case when AT&T and a data provider share an unbundled loop. AT&T's proposal that Ameritech Illinois be required to provide splitters when AT&T obtains the UNE-P therefore must be rejected.

2. ILECs Are Not Required To Provide Splitters Because The Splitter Is Not A UNE And, Even If It Were, It Does Not Meet The Necessary And Impair Standard.

Even in the absence of the FCC's clear pronouncements, the Commission could not require Ameritech Illinois to provide splitters because the splitter is not a UNE under Section

251(c)(3) of the Act and, even if it were, it does not meet the necessary and impair standard of Section 251(d)(2).

Section 251(c)(3) of the Act provides that ILECs must provide to CLECs “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, term and conditions that are just, reasonable, and nondiscriminatory. . . .” 47 U.S.C. § 251(c)(3). In the *UNE Remand Order* and *Line Sharing Order*, the FCC did not define the splitter as a UNE and did not require splitters to be unbundled. And, in the *Texas 271 Order*, the FCC specifically found that the splitter is not a UNE:

As we stated in the *UNE Remand Order*, “with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to drive the loop transmission capacity.” We separately determined that the DSLAM is a component of the packet switching unbundled network element. We observed that “DSLAM equipment sometimes includes a splitter” and that, “[i]f not, a separate splitter device separates voice and data traffic.” We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element. This distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding.

Texas 271 Order, 327. See also *Line Sharing Order*, ¶ 146 (“incumbent LECs do not currently provide access to the splitter as part of an existing unbundled network element offering”).

Even if the FCC had not specifically ruled that the splitter is not a UNE, this Commission could not properly require Ameritech Illinois to provide the splitter, for two reasons. *First*, Ameritech Illinois is required only to unbundle components of its existing network. *UNE Remand Order*, ¶ 324, *IUB I*, 120 F.3d at 813. Splitters are not elements of Ameritech Illinois’ existing network; they will be installed only to enable a CLEC to line share with Ameritech Illinois. *Second*, even if the splitter were an existing component of Ameritech Illinois’ network, access to the splitter does not meet the 1996 Act’s “necessary” and “impair” standard because

AT&T is equally capable of providing its own splitter. Under Section 251(d)(2), AT&T is entitled to obtain unbundled access to Ameritech Illinois' network elements only if such access is necessary (in the case of proprietary network elements), and the lack of access would impair AT&T's ability to provide service.

AT&T has not established that it is "necessary" for AT&T to have unbundled access to Ameritech Illinois' splitters as proposed by AT&T, or that lack of such access would "impair" AT&T's ability to provide service. Specifically, the FCC has found that ILECs and CLECs are both in the early stages of deploying advanced services equipment and that CLECs have the same opportunities as ILECs to purchase this type of equipment. The FCC concluded in the *UNE Remand Order*, at para. 308, that items of advanced services equipment "are available on the open market at comparable prices to incumbents and requesting carriers alike." Accordingly, the FCC has concluded that requesting carriers are not impaired without unbundled access to advanced services equipment. This analysis, although specifically referring to DSLAMs and packet switching, applies equally to splitters. In fact, in its description of a DSLAM in the *UNE Remand Order* at n. 324, the FCC noted that "carriers providing advanced services use DSLAMs to split voice and data traffic and route each to the appropriate destination." A stand-alone splitter performs the same function; splitters therefore do not meet the impair threshold required by Section 251(d)(2) for unbundled access.

This conclusion is buttressed by the fact that some data LECs already provide their own splitters, and the fact that all CLECs are able to purchase splitters for themselves from the same vendors as Ameritech Illinois just as readily as Ameritech Illinois. It would be unreasonable, and unlawfully beyond the scope of the unbundling obligation imposed by the Act, to require

Ameritech Illinois to provide unbundled access to splitters or to require Ameritech Illinois to combine splitters with the unbundled loop and unbundled switching UNEs.

In short, AT&T is not entitled to an Ameritech Illinois-provided splitter under Section 251(c)(3) or under the “necessary and impair” standard of Section 251(d)(2) of the Act. The Commission acknowledged these points in the *Covad/Rhythms Arbitration Decision* when it found:

Even if the *Line Sharing Order* was unclear, we could not require Ameritech to provide the splitter functionality. As pointed out by Ameritech, it is only required to unbundle components of its existing network and splitters are not elements of Ameritech’s existing network. Moreover the splitter does not meet the “necessary” and “impair” standard of Section 251(d).

Covad/Rhythms Arbitration Decision at 14.

3. AT&T’s Proposal With Respect To Splitters Would Discourage New Voluntary Offerings.

AT&T is attempting to convert Ameritech Illinois’ voluntary provision of splitters into a mandatory obligation, and to attach additional obligations. As noted above, the FCC has already rejected AT&T’s position. See *Texas 271 Order*, ¶ 329. In addition, AT&T’s demand is unreasonable and could discourage the development of new offerings by ILECs such as Ameritech Illinois. Indeed, if ILECs are not able to develop new wholesale offerings beyond those required by law that benefit CLECs and end users by providing new, innovative (but not mandatory) products without fear that such voluntary acts will become compulsory, then ILECs will be discouraged from developing new offerings that would be beneficial to CLECs and end users alike.

D. AMERITECH ILLINOIS IS NOT REQUIRED TO DEVELOP AND MAKE AVAILABLE PROCESSES TO SUPPORT AT&T'S SHARING OF AN UNBUNDLED LOOP WITH ANOTHER CARRIER.

The Commission also should reject AT&T's proposal that Ameritech Illinois be required to develop and make available the associated operations support systems and other processes to arrange for and support AT&T's sharing of an unbundled loop with another carrier. This proposal is contrary to the FCC's rulings in the *Line Sharing Order* and *Texas 271 Order*.

AT&T's proposal is based on the erroneous premise that Ameritech Illinois should perform the work, bear the cost, and provide support processes for AT&T and a data provider to jointly provide services to AT&T's customers. Although AT&T can share the use of a single UNE loop with a data provider under terms offered by Ameritech Illinois, AT&T wants to shift to Ameritech Illinois the burden of coordinating the shared use of a loop even though AT&T can perform this function for itself as readily as, if not more readily than, Ameritech Illinois.

AT&T's proposal would require Ameritech Illinois to coordinate the activities of three carriers: Ameritech Illinois, AT&T, and the data provider. It also would put Ameritech Illinois in the role of coordinating maintenance issues with two other carriers, and as noted above, would improperly require Ameritech Illinois to separate currently combined UNEs and re-combine them with other equipment that is not a UNE, *i.e.*, an Ameritech Illinois-owned splitter.

If AT&T wants to provide services jointly with a data provider over UNEs obtained from Ameritech Illinois, it certainly can do so. However, it is up to AT&T and the data provider to coordinate this function between themselves. Ameritech Illinois' only role is to provide the UNEs that either of the parties orders pursuant to its interconnection agreement. Contrary to AT&T's proposals, Ameritech Illinois has no part to play in coordinating the dealings between AT&T and its data services partner. When AT&T obtains an unbundled loop from Ameritech Illinois, that loop is treated as if it were AT&T's own facility. Ameritech Illinois, which has no

connection to any end user customer in AT&T's line splitting scenario, cannot be required to perform these functions for AT&T. AT&T and the data CLEC will have access to the line splitter and DSLAM located in a collocation space, and are the only parties positioned to efficiently coordinate their provision of services to their customers. Ameritech Illinois Ex. 7.0 (Chapman) at 33. As recently confirmed by the 8th Circuit Court of Appeals, an incumbent LEC like Ameritech Illinois is not required to do that work. (See *IUB III*, 219 F.3d at 759.)

In summary, the Commission must reject AT&T's "line-splitting" proposal. AT&T is proposing terms and conditions that are directly contrary to and prohibited by applicable FCC Orders and would burden Ameritech Illinois with significant additional obligations that simply are not necessary for AT&T to use UNEs to provide service to its customers.

IV. OSS ACCESS

A. ACCESS TO BACK OFFICE DATABASES

1. The Commission Should Not Require Ameritech Illinois to Provide CLECs with Direct, Unmediated Access to its Back Office Systems.

In the *Covad/Rhythms Arbitration Decision* (at 42-45), the Commission ordered Ameritech Illinois, in the context of its interconnection agreements with those two CLECs, to provide direct, read-only access to loop provisioning information in back office systems. In this proceeding, CLECs have asked the Commission to require that Ameritech Illinois provide that access to all CLECs. Rhythms Ex. 9.0 (Ayala) at 27-28, Sprint Ex. 1.0 (West) at 5. The Commission should decline to do so. What Ameritech Illinois offers in terms of the provision of loop qualification *information* satisfies the statutory and federal requirements in a way that does not jeopardize Ameritech Illinois' systems and the confidentiality of customer information that would be exposed to unauthorized view by the provision of unmediated access to the files as requested by the CLECs – even if that access is on a "read-only" basis.

As Ameritech Illinois' OSS witness Robin Jacobson testified, Ameritech Illinois, in response to CLEC loop qualification queries, will return the 45 data elements requested by CLECs in the Advanced Services collaboratives growing out of the FCC's order concerning the SBC Ameritech Merger. Ameritech Illinois Ex. 2.1 at 9 (Jacobson).

To provide CLECs with nondiscriminatory access to its OSS functions, Ameritech Illinois has designed and deployed "gateways" or "electronic data interfaces" that provide CLECs a single entry point for pre-ordering, ordering, provisioning, maintenance and repair, and billing.³⁴ Gateways are necessary to provide OSS information in a uniform and useable format for multiple CLECs provisioning line sharing across several states. As Ms. Jacobson explained, using a single gateway, CLECs can access the various OSS functions that are needed to provide adequate and efficient local service to their particular end users.³⁵ These 40+ data elements are currently available in the Graphical User Interface (GUI) of Ameritech Illinois' TCNET website and through an electronic data interface (EDI).³⁶ By March, 2001, the same data elements will be accessible through a new web-based GUI (Verigate) requested by the CLECs.

As discussed below, the FCC obviously had the opportunity to order ILECs to permit CLECs direct access to their back office systems, but it chose not to do so. Instead, the FCC merely ordered that ILEC's make available the information necessary to support OSS functions — information that Ameritech Illinois indisputably has made available through its gateways.³⁷

³⁴ Ameritech Illinois Ex. 2.0 at 5 (Jacobson).

³⁵ *Id.*

³⁶ *Id.*, Ameritech Illinois Ex. 2.1 at 9 (Jacobson).

³⁷ Ms. Jacobson testified that she defined "back office systems" as databases containing different types of information, and "OSS," as described by the FCC, as the functions such as pre-ordering, ordering, provisioning, maintenance and repair, and billing. Tr. 862-866. "They (the back-office databases) do not provide OSS functionality. They merely provide information to the functionality." *Id.*

The FCC has stated that an ILEC must make available to CLECs the OSS *functions* for pre-ordering, ordering, provisioning, maintenance and repair, and billing.³⁸ It has never required ILECs to provide direct access to their “back office systems.” On the contrary, the FCC has limited CLEC access to the *information* from these systems, and then only to the extent such information exists. As the FCC made clear in several places in the *UNE Remand Order*:³⁹

... the pre-ordering function includes access to loop qualification *information*.
Loop qualification *information* identifies the physical attributes of the loop plant .

..

* * *

[T]he incumbent LEC must provide access to the underlying *loop qualification information* contained in its engineering records, plant records, and other back office systems . . .

* * *

the relevant inquiry is . . . whether such *information* exists anywhere within the incumbent’s back office and can be accessed by any of the incumbent LEC’s personnel.

Ameritech Illinois’ agreement to provide the 40+ line-sharing data elements requested by the CLECs in the various POR collaboratives more than satisfies the requirements of the *UNE Remand Order*.

Further, however, under paragraph 429 of the *UNE Remand Order*, Ameritech Illinois is only required to provide access to information *via an electronic interface* (in other words, through gateways), not direct access:

[T]o the extent that ILEC employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface.

³⁸ *UNE Remand Order* at para. 425.

³⁹ *See Id.* at paras. 426, 428, 430-431 (emphasis added).

Clearly, this paragraph allows CLECs to have access to *information* contained in back office systems that support the pre-ordering function *through an electronic gateway*; it is *not* direct access to the back office systems themselves.

Leaving aside the absence of any legal basis justifying direct access to Ameritech Illinois' back office systems, there are at least three other reasons why the Commission should reject the CLECs' proposal.

First, direct access would probably be more frustrating than useful for CLECs because they likely would be unable to utilize the information. The databases to which the CLECs seek access have developed and changed over decades. The result is that information in these systems is stored in a variety of different (and sometimes cryptic) formats. This problem is exacerbated by the fact that each region in SBC's network has developed and changed differently and so the format in which information is stored in these systems varies from Pacific Bell to Ameritech Illinois to Southwestern Bell regions. If a CLEC were to access each back office system, it would receive information in various enigmatic formats that would be indecipherable. This is contrary to the intent of the Merger Conditions—which sought uniformity of OSS across SBC's 13-state OSS. See *FCC Merger Order* at paragraph 371. Moreover, even if the CLECs obtained and could decipher the information, the information still would have to be translated into the required Local Service Request format for ordering. Ameritech Illinois Ex. 2.1 at 15 (Jacobson).

Second, CLEC direct, unmediated access to Ameritech Illinois' back office systems raises the significant issue of the CLEC's ability, thereby, to access confidential non-OSS related information to which it is simply are not entitled.

Allowing a CLEC to have direct access into back office databases containing customer information (even on a read-only basis) will provide it with the opportunity to data mine information of end-users and even information of their own competitors.

For example, the data available through direct access to the Loop Facility Assignment and Control System ("LFACS") includes, but is not limited to, all pending service orders. This is not simply the service orders of the inquiring CLEC, but also the pending service orders of all CLECs as well as Ameritech Illinois' retail and wholesale service orders. Each service order contains the following information: Directory Listing Information; Service and Equipment Information; Billing Information; Service Order Remarks Information.

These information sections include the following: customer name and address; customer telephone number (regardless of whether they are published or non-published numbers); additional customer services; customer credit information; cable and pair assignments; customer-provided special premises access information that was made available to enable the work to be performed – e.g., the key to the gate to the back yard is under the door mat, no one is home call my sister at xxx-xxxx one hour before work is to be done, daughter will be home alone, but will let you in, etc.; and Can Be Reached (CBR) telephone numbers. Obviously, some of this information is given to Ameritech Illinois with the understanding (or at least with the customer's reasonable assumption) that it will not be given out to (or made available for viewing by) anyone else.

There is a great potential that end user customers could be harmed if Ameritech Illinois is required to allow entities and persons over whom it has no control to have unrestricted direct access to back office systems. Indeed, in some cases, direct access to Ameritech Illinois' back

office system could pose a security risk to end users. Specifically, back-office databases contain high security information such as:

Fiber and cable deployment (routes of cable to airlines, airports, police stations, fire stations, hospitals, and government agencies)

Access to unlisted telephone numbers

Technician dispatch for Special Services

Security alarm information

See Ameritech Illinois Ex. 2.1 at 10-12 (Jacobson). Clearly, direct access to these systems would jeopardize both the safety and privacy of end user customers.

Further, Section 222 of the federal Telecommunications Act prohibits a carrier from providing access to customer proprietary network information ("CPNI") without customer authorization. Providing CLECs with direct, unmediated access to certain of these databases will clearly provide them with access to the CPNI of their own customers. But it will also let them browse for information about other carriers' customers – without the consent of those customers.

Rhythms' witness Ayala cavalierly dismisses Ameritech Illinois' concern in this regard. With respect to sensitive information like the location of the keys to a customer's house, Mr. Ayala claims that the CLEC is entitled to the information and takes umbrage at the assumption that a CLEC might ever misuse it. Rhythms Ex. 4.0 (Ayala) at 23. The first problem that Mr. Ayala ignores, of course, is that Ameritech Illinois has no control over how anyone uses the information once unmediated access is allowed. Moreover, providing such access is very likely to be contrary to the customer's expectation — especially for the majority of customers who have no business relationship to the browsing CLEC. As noted above, unmediated direct access, by its very definition, will allow CLECs to browse the database for whatever information is in there about *any* customer – even other carriers' customers.

With respect to the CPNI issue, Mr. Ayala first claims that “CLECs do not access information of customers for which it [sic] does not have a pending [service] request..” *Id.* at 22. Again, as noted above, direct access would provide the CLEC with the ability to do much more than that. Moreover, Mr. Ayala contradicts himself in that regard when he says on page after page that CLECs are entitled to access *all* information in these databases. Moreover, Mr. Ayala claims that CLECs are entitled to obtain the information, not only on the basis of an individual telephone number or address, but “on any other basis that SBC-Ameritech or SBC maintains access to such information..” *Rhythms Ex. 9.0 (Ayala)* at 10. In addition, Mr. Ayala says Ameritech should use standard mechanisms, that it uses to protect CLEC information from its affiliates, to screen CLEC information from other CLECs. That of course is impossible in an unmediated, direct access environment. The way Ameritech Illinois protects CLEC information from its own retail affiliate is to deny the affiliate access to the database in which the data resides.

Third, the Commission should await the outcome of its own OSS proceeding on this point. In addition to being an issue in the federal Enhanced OSS Plan of Record for Pre-Ordering and Ordering of xDSL and Other Advanced Services proceeding, the issue of direct access to backend systems for loop qualification information is being specifically addressed in Docket No. 00-0592, the Illinois OSS proceeding dealing with Condition 29 of the Illinois Merger Order. In particular, in the Hearing Examiner’s Proposed Order (“HEPO”) released November 9, the hearing examiner concluded:

Unlimited, unrestricted and undefined access to AI’s back-end systems, as the record suggests, cannot be countenanced. The Commission is greatly concerned that none of the issues related to direct access, such as confidentiality, functionality, or security, have been resolved or even addressed in this cause. It is unclear how competitor information would be “firewalled” so that confidentiality concerns would be addressed. It is unclear how the functionality of systems at

either Ameritech Illinois or the CLECs end would be impacted. We see no standards of conduct developed or agreed upon by the parties. Thus, it is unclear how data security concerns or disputes would be resolved. These are grave matters. Docket 00-0592 HEPO at 79.

The HEPO asks for further briefing on the issue. If the Commission is unwilling to categorically deny the CLECs' request in this proceeding, then at most it should let the issue continue to be worked in the OSS proceeding.

B. TIME FRAME FOR COMPLETING ENHANCEMENTS TO OSS FOR LINE SHARING

1. The Commission Should Refuse to Require the Accelerated implementation of Graphical User Interfaces (GUIs) Before March.

In the *Covad/Rhythms Arbitration Decision* (at 43), the Commission ordered that Ameritech Illinois make the pre-ordering GUI (Verigate) and the ordering GUI (LEX) available no later than December 2. Ameritech's original plans were to implement them in March 2001. Rhythms in this proceeding is asking the Commission to order the implementation of the GUIs by the end of the year. Rhythms Ex. 9.0 (Ayala) at 32. In the Covad/Rhythms arbitration, however, the Commission granted rehearing on the issue, with the hearing to take place January 3-5, 2001. The Commission should refuse to adopt such a requirement in this proceeding.

First, as Ms. Jacobson points out in great detail, it is technically infeasible to accelerate the deployment. Very significant software programming changes to existing Ameritech Illinois and SBC systems on an extremely ambitious schedule are required to meet the March 2001 date. The effort required of SBC/Ameritech Illinois to enhance the existing SBC ordering GUI, LEX, for use in Illinois is significant and is dependent on numerous other back-end system modifications. Therefore, the deployment of LEX requires more than just taking this existing GUI and plugging it into Illinois. Moreover, the existing application is being re-engineered to be accessible using a web browser rather than through SBC-provided software. In addition, new

screens must be developed to support the ordering of products that are currently ordered electronically in Illinois, but have not previously been ordered via the LEX GUI in other SBC regions. Once new screens are developed, information must be developed and loaded into the system regarding the proper format and acceptable data to be entered in the many new fields on these screens.

Behind the GUI, work must be done to create the connecting software, referred to as middleware, that provides the connectivity, the rules, and the translation functions that link the GUI to Ameritech Illinois' ordering interface system. Essentially, the middleware formats orders entered through the GUI into a format acceptable to the ordering interface system, so that these GUI-entered orders appear as if they have been received via EDI. The middleware must also be programmed to make the same transformation in reverse for information, such as Firm Order Confirmations (FOCs) and Service Order Completions (SOCs), sent from Ameritech Illinois to the CLEC GUI user.

This enhanced GUI software must then be subjected to testing by Ameritech Illinois software engineers before deployment. User documentation and training must be developed. The hardware and the actual computers have to be purchased, installed, and tested.

The development of a new web-based infrastructure and the need to tailor the application development to the new infrastructure has added some uncertainty to the GUI deployment estimates because SBC has never undertaken such a comprehensive development in the past. To minimize the risk of an invalid estimate, the GUI teams also applied a mathematical estimating procedure that was developed in 1993 by Gustav Karner for estimating object-oriented projects that are based on Use Case requirements. The calculation involves weighting the complexity of

certain factors of the requirements as well as weighting the experience level of the team members.

The implementation of uniform interfaces also requires change both in the internal and external interactions with the applications. There is development work to be completed for the interface used by the Local Service Center to handle the Local Service Requests ("LSR") to ensure that uniform responses are triggered to the CLECs, as well as a significant training effort for the Local Service Center representatives. Ameritech Illinois Ex. 2.1 at 27-29 (Jacobson).

Clearly, considering the level of effort required to provide the new GUI, implementation prior to the scheduled March 2001 release date is not feasible.

Second, the slight delay in the availability of these GUIs cannot reasonably be considered to have a significant impact on the competitive marketplace in Illinois, based on the CLECs' extensive use of other electronic interfaces. For example, in the first three months of 2000, Ameritech Illinois received an average of 77,000 resale orders monthly and an average 82% of them were received over Ameritech Illinois' Electronic Data Interchange (EDI) interface. Ameritech Illinois also received an average of 39,000 unbundled UNE orders monthly, of which an average of 91% of them were received electronically (40% were received via EDI and 51% were received via an ASR). After excluding CLECs that submit less than 4 orders per day (less than 100 per month), 72% (38 of 53) of CLECs utilized the Ameritech Illinois' EDI interface to submit 85% of their orders.

Clearly, the great majority of CLECs operating in the Ameritech region and specifically in Illinois have already developed the capability to exchange information with Ameritech Illinois via EDI and without requiring a Graphical User Interface capability. Hence, deployment of the new GUI pursuant to the planned schedule will not have an adverse impact on competition.

Third, for CLECs that have not developed (and do not want to develop) their own interfaces, there are commercially available alternatives. For example, Telcordia's Exchange Link product enables CLECs to interface with Ameritech Illinois' pre-ordering EDI interfaces using Exchange Link's Graphical User Interface. Exchange Link is currently in production use by Sprint, and Telcordia is in contract negotiations for Exchange Link with eight other CLECs in the Ameritech Illinois region. Since Exchange Link also provides access to other ILECs' preordering and ordering interfaces, the CLECs would have the added benefit of being able to use the same Graphical User Interface to perform pre-ordering and ordering functions for all the ILECs that Exchange Link has interfaces with.

Mantiss CLECware is another commercially available product that provides the user with a Graphical User Interface that interfaces with Ameritech Illinois' EDI pre-ordering and ordering interfaces. Mantiss provides CLECware as either a service bureau or as an integrated software solution. As a service bureau, Mantiss maintains the OSS Interconnection infrastructure with the ILECs. CLECs access CLECware over the Internet to access both pre-ordering and ordering functionality. Using CLECware as an integrated software solution, CLECs actually can integrate CLECware into their OSS environment. Ameritech Illinois Ex. 2.1 at 29-31 (Jacobson).

Fourth, there is no need to order expedited implementation since Ameritech Illinois is funding a temporary "fix" until scheduled implementation. Specifically, Ameritech Illinois has offered to make an interim GUI service arrangement available on the same terms and conditions as the negotiated agreement arising out of the Wisconsin OSS collaboratives in PSC Docket 6720-TI-160. Ameritech Illinois also agreed to pay all, or some portion of, the charges applicable to the GUI service arrangement(s). Ameritech Illinois voluntarily extended this offer to participants of the Illinois OSS merger condition collaborative. Ameritech Illinois has recently

enhanced its original offer (to Illinois collaborative participants as well) so that it is easy for a CLEC to utilize this third-party service without charge simply by providing a forecast and staying within it. Ameritech Illinois Ex. 2.1 at 31-32 (Jacobson).

Given these alternatives available to CLECs that choose not to exchange information with Ameritech Illinois via EDI, provisioning the new GUI in accordance with the planned schedule will not adversely affect competition.

Finally, the Hearing Examiner in the merger-related OSS proceeding has, in the HEPO, declined to require accelerated implementation of the GUI:

Given the short time before implementation of the permanent ordering GUI, and the availability of both the existing EDI interface and interim GUIs, during that period, we do not believe that competition will suffer if we respond favorably to AI. On the whole, and in light of all the relevant surrounding circumstances, we are persuaded that AI's proposed March 2001 implementation date for the GUIs is reasonable.

In light of the above, the Commission should decline to force an accelerated implementation of the GUI.

C. FLOW THROUGH

In the world of OSS, the term "flow through" applies to certain CLEC *orders* that are placed electronically. The discussion of flow through at pages 67-68 of the Hearing Examiner's Proposed Order in Docket 00-0592 (the Illinois SBC/Ameritech Merger Order OSS-related arbitration) is instructive:

"Flow through" as defined by the performance measure collaborative related to OSS is any order that is received from a CLEC and processed through Ameritech's ordering interface into ACIS (the Ameritech service order system) without manual intervention.

On the wholesale side, the CLEC submits a Local Service Request ("LSR") in the EDI format. AI's order interface and service representatives check orders for format and content. Orders that are improperly formatted, or that do not contain necessary data, are returned to the requesting carrier with a rejection notice.

Once a properly formatted LSR passes the edit checks in the ordering interface, the next step is to translate it from the EDI format to AI's internal service order format. For some order types, the interface is designed to translate the entire LSR electronically and send it into AI's back-end systems for processing. For other order types, fully electronic translation is not yet possible; in those cases, the LSR is sent to an AI service representative, who re-keys part or all of the order directly into the back-end systems.

The term "flow through" is used to describe the method of translation. A CLEC order is said to "flow through" if the translation is successfully performed electronically, i.e., if the order passes through the ordering interface and into AI's back-end systems without need for manual intervention. (Citations omitted.)

In this light, the CLECs' discussion of "flow through" in this proceeding is confusing.

For example, Mr. Ayala speaks of the CLECs' need for:

electronic flow-through systems that allow real-time access to pre-ordering, ordering, provisioning, and maintenance and repair and billing to support xDSL-based services in line shared arrangements. Rhythms Ex. 9.0 (Ayala) at 6.

He also states:

Second, CLECs must have real-time flow-through access to SBC-Ameritech's OSS so that CLECs can obtain loop provisioning information during pre-ordering, and to interact with SBC-Ameritech's OSS records, databases and backend systems to support ordering, provisioning, maintenance and repair and billing for xDSL services. *Id.*

In Section IV.A. of this brief, Ameritech Illinois has dealt with the question of CLEC access to back end systems to obtain loop provisioning information on a pre-order basis. That issue, as well as issues surrounding CLEC access to other Ameritech Illinois systems to support OSS functions, have been thoroughly explored in Docket 00-0592 and the collaboratives leading up to it which were conducted pursuant to Condition 29 of the *Illinois Merger Order*.

Mr. Ayala also discusses flow through in the context of the alleged need to have a GUI arrangement available for placing orders for CLECs who have not and do not want to implement the EDI-based ordering mechanism that Ameritech Illinois makes available. Rhythms Ex. 9.0 (Ayala) at 30-31.

Regarding that issue, Ameritech Illinois has discussed in Section IV.B. of this brief the reasonable timing of the implementation of the ordering GUI (March, 2000).

Finally, Mr. Ayala discusses Rhythms' desire for a system that would execute a request of a line station transfer ("LST") "without human intervention" if a spare "clean" were found running the customers premises if the in-service loop needed conditioning. Rhythms Ex. 9.0 (Ayala) at 32-33.

As Ameritech Illinois witness Robin Jacobson explained in her testimony, what Rhythms' is talking about here is not flow through but the integration of the pre-order function (by which the CLEC asks for information *before* the order is placed – hence the term *pre-order*) with the ordering function (by which the CLEC directs the ILEC to fill a specific request). Tr. at 938-945. She also testified that integration of information received in response to a pre-order query with the subsequent placement of an order based on that information is something that the CLEC can easily do in its own systems and that ILECs do not have any federal obligation to perform that function and that, especially where the CLEC is using a its own GUI, Ameritech Illinois would have no ability to do that integration. Tr. at 945-947.

D. ACCESS TO LOOP INFORMATION ON A MARKET-WIDE BASIS

CLECs testimony on this topic was not clear. To the extent that, in this section, the CLECs will be discussing their claim that Ameritech Illinois is obligated to provide them with direct access to its back office systems, Ameritech Illinois would defer to its discussion of the issue in Section IV.A., *supra*. Further, it must be remembered that any OSS requirements in this regard are related to the *pre-order* function. The Docket 00-0592 HEPO, at 7, notes the appropriate definition: "*Pre-ordering*: the process by which CLEC and Ameritech Illinois retail customer representatives alike obtain information to place an order." Any CLEC attempt to secure broader "demographic" or other data not related to the placing of an order for provision of

service to a specific customer goes beyond any requirement of the federal Telecommunication Act and the FCC's rules.

To the extent that CLECs will be discussing their informational "needs" on Project Pronto deployment, Ameritech Illinois would note that Pronto is an overlay network that will not affect the existing network or the traditional methods of line sharing in that network. Ameritech Illinois Ex. 6.0 (Lube) at 5. Therefore, Ameritech Illinois complies with its federal OSS information obligations by providing the 45+ loop qualification information data elements in response to discrete CLEC queries, as described in Section IV.A., *supra*.

V. PROVISIONING SPLITTERS ON A SHELF-AT-A-TIME BASIS VS. LINE-AT-A-TIME BASIS.

A. AMERITECH ILLINOIS SHOULD NOT BE REQUIRED TO PROVIDE SPLITTERS ON A SHELF-AT-A-TIME BASIS.

The Commission has no authority to instruct Ameritech Illinois where and how to install and configure its central offices splitter equipment associated with the HFPL UNE. As explained fully in Section III.C., *supra*, Ameritech Illinois has no obligation to deploy splitters under any circumstances. The FCC has made clear, through the plain language of the *Line Sharing Order* and the *Texas 271 Order*, that Ameritech Illinois is not required to own splitters or to provide splitter functionality to CLECs. Rather, the FCC gave incumbent LECs the option either to provide splitters or to allow competitive LECs to purchase and install splitters themselves. *Line Sharing Order*, ¶¶ 76, 146; *Texas 271 Order*, ¶ 328. This Commission agreed, in Dockets No. 00-0312 and 00-0313, that Ameritech Illinois is not required to provide splitters. *Covad/Rhythms Arbitration Decision*, at 12.

Although Ameritech Illinois is not required to provide splitters, it has voluntarily agreed to provide them in certain circumstances. Ameritech Illinois Ex. 1.0 (Schlackman) at 13-14. This voluntarily commitment, however, does not give this Commission or CLECs the authority

to dictate how those splitters are provisioned by Ameritech Illinois when voluntarily provided as a convenience to CLECs. Indeed, imposition of burdensome splitter obligations on Ameritech Illinois conflicts with the notion that Ameritech Illinois has the option to provide splitters. The Commission therefore must reject the CLECs' requests that splitters be deployed by Ameritech Illinois on a shelf-at-a-time basis.

Despite this, however, Ameritech Illinois is very aware that the Commission, in the *Covad/Rhythms Arbitration Decision*, ordered Ameritech to provide both line and shelf-at-a-time options in connection with Covad's and Rhythm's interconnection agreements. Nonetheless, Ameritech Illinois must restate that, from a policy perspective, there are several reasons why Ameritech Illinois should not be required to provide splitters a shelf-at-a-time when it voluntarily supplies them, including: (1) limitations of Ameritech Illinois' inventory system; (2) frame exhaust; and (3) efficient use of capital for both Ameritech Illinois and CLECs. Ameritech Illinois Ex. 1.0 (Schlackman) at 20.

First, Ameritech Illinois' inventory system is unable to accommodate the inventorying of ports and cross-connects for both line-at-a-time and shelf-at-a-time provisioning. As Ameritech Illinois' witness on outside plant, central office, and other technical issues, Betty Schlackman, testified, Ameritech Illinois utilizes a back office system, SWITCH, to inventory splitter equipment. At the request of CLECs, this system has been upgraded specifically to inventory each Ameritech Illinois-owned splitter shelf on a line by line basis. Indeed, the majority of CLECs were reluctant to pay for an entire splitter shelf and expressed a desire for Ameritech Illinois to offer splitter functionality on a line (or port) at a time basis. Relying upon these representations, Ameritech Illinois moved forward under the assumption that it would provide

splitter functionality a line-at-a-time, and engineered its facilities and ordered equipment accordingly. Ameritech Illinois Ex. 1.0 (Schlackman) at 21-22.

Preparing its facilities to provide splitter functionality a shelf-at-a-time would require massive re-engineering on the part of Ameritech Illinois. All of the splitters deployed to date have been cable for line-at-a-time provisioning. Ameritech Illinois Ex. 1.1 (Schlackman) at 17. In addition, the Telcordia Technologies ("Telcordia") package that Ameritech Illinois purchased, which allows Ameritech Illinois to provision the HFPL on a mechanized rather than manual basis, can do so only on a line-at-a-time basis. As a result, if Ameritech Illinois were required to dedicate and provide splitters a shelf-at-a-time, Ameritech Illinois would need to secure additional services from Telcordia (the creator of Ameritech Illinois' inventory system) to develop a completely new OSS modification. Moreover, Telcordia has yet to provide any indication of how much time – and money – it would take to develop such a provisioning system, except to say that it would be very difficult and probably very costly. Ameritech Illinois Ex. 1.0 (Schlackman) at 22-23, Ex. 1.1 (Schlackman) at 1-16.

Equally significant, however, is the issue of whether CLECs would be prepared to absorb the cost associated with all the changes necessary to offer splitters additionally on a shelf-at-a-time basis. It is instructive that Rhythms has complained about having to pay for the entire shelf in the shelf-at-a-time offering required by the Commission in the *Covad/Rhythms Arbitration Decision*. See Rhythm Links, Inc.'s Application for Rehearing and Reconsideration filed September 20, 2000, in Dockets 00-0312 and 00-0313 (cons.). Given the CLECs' puzzling reluctance to pay for the entire shelf that it is occupying (and preventing others from using), if other legitimate costs are added to the shelf-at-a-time offering, CLECs may well steer clear of it (especially given the initial preference of a large number of CLECs for line-at-a-time

provisioning). While it is understandable that CLECs would like as many options as possible, their willingness to pay the costs associated with the additional choice may be absent, potentially leaving Ameritech Illinois with a cost recovery problem if it is forced to undertake the work associated with providing its own splitters in a manner other than that which it originally planned.

With respect to frame exhaust, under the "shelf-at-a-time" option, there is one less block termination on the frame per shelf, and consequently, one less cross connect jumper for each HFPL service order. This is because the cabling from a CLEC's "reserved" splitter shelf would connect directly to the CLEC's DSLAM. However, if Ameritech Illinois were required to provide shelf-at-a-time provisioning as an option to several CLECs, the overall number of cables and blocks that would appear on the frame would actually increase. For example, if ten CLECs requested to implement line sharing using ILEC-owned splitters for a total of 192 lines, this would require a total of 192 splitter ports. If each of the ten CLECs requested that Ameritech Illinois provide the CLEC its own splitter shelf, 10 shelves would be required. In contrast, if the CLECs purchased the splitter functionality a line-at-a-time, only two shelves would be needed. On the frame, this difference is significant; twenty-four cables (4 each per 16-line splitter) as opposed to eighty cables, and six blocks mounted on the frame as opposed to twenty blocks mounted on the frame.⁴⁰ Ameritech Illinois Ex. 1.0 (Schlackman) at 23-24.

⁴⁰ Although counsel for Rhythms seems to suggest that exhaust of the frame is somehow mitigated by Ameritech Illinois' plans to deploy digital loop carriers (Tr. at 526), the facts establish otherwise. First, Project Pronto is merely in its initial stages and any effect it may have on frame space is speculative. Second, Ameritech Illinois' plan to place fiber-fed digital remote terminals is intended to extend the reach of xDSL services as an *overlay* network. As such, there are no plans to remove copper facilities, nor their central office frame terminations. Moreover, not all of Project Pronto is being deployed as "integrated" DLC, therefore, those remote terminals that are being deployed as "universal" digital loop carrier systems, known as UDLC, will require additional frame terminations. In fact, 40% of Project Pronto DLC is planned to be deployed as Universal DLC. Frame exhaust is primarily due to the proliferation of competition, as evidenced by all the new carrier entrants and the unprecedented growth in collocation. With each new service, such as line sharing, more blocks are required on the frame to

With respect to efficiency, despite CLEC's assertions to the contrary, it is more efficient for Ameritech Illinois to provide splitters a line-at-a-time than it is to provide splitters a shelf-at-a-time. *First*, splitter technology is in its infancy. Technological advances coupled with expected decreases in the cost of integrated DSLAM equipment suggest that wide deployment of this type of splitter technology could lead to potentially huge stranded investment to Ameritech Illinois. Given that Ameritech Illinois does not line share with itself, it is unlikely that Ameritech Illinois would be able to re-use any excess splitter capacity that would result from a shelf-at-a-time provisioning requirement, thereby creating a strong likelihood of stranded investment.⁴¹

Ameritech Illinois Ex. 1.0 (Schlackman) at 27-28. *Second*, providing splitters a "line-at-a-time" was the CLECs' "first choice" because it provides an inexpensive solution to obtaining splitters. *Third*, Ameritech Illinois' new HFPL provisioning system discussed above, allows service orders to "flow through" *without* manual intervention. "Shelf-at-a-time" provisioning is inefficient because Ameritech Illinois must *manually* assign the service order — which could also increase both Ameritech Illinois' and the CLEC's costs. Ameritech Illinois Ex. 1.0 (Schlackman) at 20-21.

Most importantly, given the current limited availability of splitters, the CLECs' attempt to require Ameritech Illinois to provision Ameritech Illinois-owned splitters on a shelf-at-a-time

terminate the necessary equipment for both Ameritech Illinois and CLECs. As such, Ameritech Illinois' plans to deploy Project Pronto will not alleviate frame exhaust. Ameritech Illinois Ex. 1.0 (Schlackman) at 24.

⁴¹ If Ameritech Illinois were required to provide splitter functionality a shelf-at-a-time, there is a strong potential for underutilization of available splitter capacity. For example, if 10 CLECs requested splitter shelves but each uses only 5 lines, there would be a total of only 50 splitter ports in use but 10 splitter shelves on the frame, one for each CLECs. Because there are 96 line ports per splitter shelf, there would be a total of 960 splitter ports available, thereby leaving a total of 910 unused splitter ports. If, on the other hand, Ameritech Illinois provides line sharing a line-at-a-time, only one splitter shelf would be necessary, and there would be only 46 unused splitter ports. Clearly, where Ameritech Illinois-owned splitters are used, provisioning line sharing a line-at-a-time is more efficient and would better promote competition in the provision of xDSL services than provisioning the splitter a shelf-at-a-time.

basis is really an effort to reserve scarce splitter capacity for themselves, to the exclusion of other potential competitors. As a policy matter, this Commission should not endorse a provisioning requirement which reduces the potential number of competitors that could gain access to Ameritech Illinois' HFPL product using Ameritech Illinois' own splitters. Yet that is precisely what the CLECs' proposed shelf-at-a-time requirement would do. If one CLEC reserves an entire splitter shelf for its own use, none of the ports on that shelf are available for use by other CLECs. Ameritech Illinois Ex. 1.0 (Schlackman) at 27-29. The anti-competitive implications of this approach are self-evident, and are especially troubling given the shortage of splitters that has been reported by vendors. If, on the other hand, Ameritech Illinois provides its HFPL product using its own splitters a line-at-a-time, it is possible for up to 96 CLECs to have access to the same shelf, if each were selling a single xDSL line. *Id.* Of course, under Ameritech Illinois' approach, any CLEC is free to self-provision splitters a shelf-at-a-time simply by purchasing and collocating its own splitters itself. Finally, it should be noted that other Arbitrators have agreed with Ameritech Illinois' position on this issue. The *California Final Arbitrator's Report* adopted this same position, stating on page 25:

The desirability of rapid deployment of line sharing must be balanced with cost and feasibility. On balance, it is reasonable here to adopt line-at-a-time, but not card at a time or shelf-at-a-time.

In sum, the CLECs are requesting to reserve entire ILEC-owned splitter shelves for themselves and yet not be obligated to pay those splitters until such time as they find customers and then on a port or line-at-a-time basis. Rhythms Ex. 7 at (Riolo) at 20-21. If anything, this re-emphasizes the inefficiencies and anti-competitiveness of shelf-at-a-time provisioning. If shelf-at-a-time provisioning is essential to a particular CLEC's business plans, it can purchase and provide its own splitters a shelf-at-a-time; it does not need Ameritech Illinois to do so for it. At a minimum, however, if the Commission requires Ameritech Illinois to provide splitters on a

shelf-at-a-time basis, then as Staff has recommended, Staff Ex. 1.0 (Clausen) at 5, and as the Commission directed in the *Covad/Rhythms Arbitration Decision* (at 18), CLECs should be required to pay charges as if the entire shelf were being utilized.

VI. LOCATION OF SPLITTERS

A. SHOULD THE MDF BE CONSIDERED THE LEAST COST MOST EFFICIENT INSTALLATION POINT?

This issue is addressed in Section VI.B. below.

B. SHOULD THREE DIFFERENT SPLITTER LOCATIONS BE OFFERED?

With respect to where the splitter should be located, the law is clear. Under Section 251(c)(6) of the Act, neither the CLECs nor this Commission can dictate the particular areas within Ameritech Illinois' central offices where those CLECs can collocate their equipment. To the contrary, the Court of Appeals for the D.C. Circuit recently vacated an FCC rule that required LECs to give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible. In vacating the rule, the Court stated:

The FCC offers no good reason to explain why a competitor, as opposed to the LEC, should choose where to establish collocation on the LEC's property; nor is there any good explanation of why LECs are forbidden from requiring competitors to use separate entrances to access their own equipment; nor is there any reasonable justification for the rule prohibiting LECs from requiring competitors to use separate or isolated rooms or floors. It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises, subject to only technical feasibility. There is nothing in § 251(c)(6) that endorses this approach. The statute requires only that LECs reasonably provide space for "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carriers," nothing more.

GTE Services Corporation et al. v. Federal Communications Commission et al., 205 F. 3d 416, 426 (D.C. Cir. 2000) (emphasis added). Clearly, neither the CLECs nor the Commission can

dictate where splitters are located in Ameritech Illinois' central office, or how splitters are voluntarily deployed.

Of course, it necessarily follows that, if the Act does not permit CLECs to determine where they are permitted to collocate their equipment within an ILEC's central office, they likewise cannot dictate where the ILEC locates its own equipment within its central office.

In accordance with these legal requirements, Ameritech Illinois proposes that when the CLEC owns the splitter, and physically collocates, the CLEC may install its splitters in the CLEC's collocation arrangement area (whether caged or cageless), consistent with Ameritech Illinois' physical collocation tariff. When the CLEC is virtually collocated, Ameritech Illinois will install, provision and maintain the CLEC's splitters under the terms of its virtual collocation tariff. Additionally, where Ameritech Illinois owns the splitter, Ameritech Illinois will determine where it will locate such splitters within the central office. Ameritech Illinois Ex. 1.0 (Schlackman) at 28-29.

Nonetheless, the CLECs assert that Ameritech Illinois should be required to locate the splitter (whether ILEC-owned or CLEC-owned) on the Main Distribution Frame ("MDF"). Rhythms Ex. 8.0 (Riolo) at 39. This position should be rejected. Nothing in the Act, the FCC's *Line Sharing Order* or any other FCC order authorizes such a result. Rather, Ameritech Illinois must be permitted to control where it places the splitter that Ameritech Illinois owns, as well as where CLECs collocate their own equipment. Ameritech Illinois also must be allowed to manage the use of its own central office floor and frame space to ensure that it is used efficiently and in a safe manner. Ameritech Illinois Ex. 1.0 (Schlackman) at 16-17. Indeed, as noted above, this is precisely what the Court of Appeals for the D.C. Circuit held in the *GTE* case when it vacated the FCC rule that required incumbent LECs to give competitors the option of collocating

equipment in any unused space within the incumbent's premises, to the extent technically feasible. Similarly, the *California Final Arbitrator's Report* reached the same conclusion, stating at page 20, "The CL[E]C . . . may not dictate the location of the splitter owned by the ILEC."

The Commission has already found that the *GTE* case is controlling on the issue and confirms that CLECs have no overriding authority to "pick and choose preferred space on the LECs' premises." *Covad/Rhythms Arbitration Decision* at 14. Specifically, the Commission rejected the Covad and Rhythm's argument that the FCC had recommended that the splitter be located on the MDF. *Id.* The CLECs have provided nothing new for the Commission's consideration on this issue, and the Commission should again reject the CLECs' position.

The CLECs also assert that, regardless of where Ameritech Illinois actually does locate the splitter, costs and prices should be based on the assumption that the splitter is located on the MDF because that is the most efficient service configuration. Rhythms Ex.1.0 (Murray) at 29 and Ex. 8.0 (Riolo) at 40-41. This argument is wrong. First, as a matter of central office engineering practice, equipment such as a splitter is not installed on the MDF. Rather, the MDF is designed for wiring – *i.e.*, for mounting connecting and terminating blocks to facilitate cross connects, or jumper wire. Ameritech Illinois Ex. 1.1 (Schlackman) at 22. Moreover, placing splitters on the main distribution frame could lead to faster exhaust of the frame. Indeed, the frame-mounted splitters that Rhythms claims are "more efficient" can only provision a maximum of 16 lines. More importantly, these splitters are larger than a 100 pair connecting block that Ameritech Illinois mounts on frames. If Ameritech Illinois were to mount splitters on the MDF so that CLECs could avoid paying for tie cabling, Ameritech Illinois would consume twice the frame space. Ameritech Illinois Ex. 1.1 (Schlackman) at 22-25.

Rhythms' efficiency claim is also flawed because it looks at efficiency solely from the narrow economic perspective of Rhythms alone. However, Ameritech Illinois should not be required to engineer and the FCC's TELRIC methodology does not require it to engineer, its central offices to optimize the economics for just one particular service or one particular CLEC. Rather, as a matter of sound planning and engineering, an ILEC should and must take into account all of the different services and the needs of all customers and carriers provided or served out of that central office, including the ILEC itself. Clearly, it would not be reasonable to require the design of a central office that would ignore the needs of services and products other than line sharing.

Again, the Commission has previously rejected CLEC efficiency-based claims for MDF-mounted splitters. In the *Covad/Rhythms Arbitration Decision*, the Commission stated:

We also reject Rhythms and Covad's argument that it is more efficient to locate splitters on the MDF. As pointed out by Ameritech, placing splitters on the MDF is only efficient from the narrow economic perspective of Rhythms and Covad and their provision of a single service, xDSL service. Indeed, Rhythms and Covad desire such a configuration so that they do not have to pay for tie cabling. Ameritech, however, should not be required to engineer its central office to optimize the economics for just one particular service or provider...

In sum, Rhythms' and Covad's arguments merely request this Commission to favor their needs over the needs of all other CLECs and of Ameritech to have sufficient space on the MDF.

Id. at 14. The CLECs have provided nothing new on this issue in this proceeding, and the Commission should again reject the CLECs' claim.

Moreover, the *Line Sharing Order* requires Ameritech Illinois to provide the CLECs with test access to the splitter. Placing Ameritech-owned splitters in common areas provides CLECs with such access, which would not be available if splitters are placed on or adjacent to the MDF. Ameritech Illinois Ex. 1.1 (Schlackman) at 28.

The Commission also should reject the CLECs' position that splitter-related prices be set based on the assumption that the splitter is located on the MDF because it would require prices to be based on a hypothetical network. The Eighth Circuit held in *IUB III* that *any* hypothetical network assumption violates the plain language of the Act. The court stated:

At bottom . . . Congress has made it clear that it is the cost of providing the actual facilities and equipment that will be used by the competitor (and not some state of the art presently available technology ideally configured but neither deployed by the ILEC nor to be used by the competitor) which must be ascertained and determined.

IUB III, 219 F.3d at 751. Although the Eighth Circuit has stayed its mandate pending appeal, Ameritech Illinois expects the Eighth Circuit's decision will be affirmed, as it is based on the Act's unmistakably clear language that the ILECs' "cost . . . of providing the interconnection or network element" is to be recovered by "just and reasonable rate[s]."

Additionally, setting prices at a level that does not permit Ameritech Illinois to recover its costs would constitute an unconstitutional taking of Ameritech Illinois' property without just compensation. See *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989); *Tenoco Oil Co. v. Department of Consumer Affairs*, 876 F.2d 1013, 1020 (1st Cir. 1989); *Mississippi River Fuel Corp. v. FPC*, 163 F.2d 433, 437 (D.C. Cir. 1947); *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, 41 F.Supp.2d 1158, 1170 (D. Or. 1999).

In addition, as this Commission has already found, a "mandatory menu" approach, to the extent that it dictates the location of CLEC or Ameritech-owned splitters (with the exception of CLEC splitters in appropriate collocation space),

is contrary to law and, in terms of regulatory policy, unreasonable because it addresses line sharing from the narrow business prospective of [an individual CLEC's] own economic interests. Neither Ameritech Illinois nor this Commission has an obligation to ensure the success of [CLECs'] business plans (or any individual carrier's business plans), and it would be unlawful to impose such an obligation on Ameritech. *Covad/Rhythms Arbitration Decision* at 14.